THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION NO. 147 of 2006

DATED: 06-01-2006

Between:

Toddy Tappers Cooperative Society

Nizamabad Group No.1, Nizamabad …Petitioner

And

The Prohibition and Excise Sub-Inspector,

Excise Station, SHO, Nizamabad …Respondents

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WRIT PETITION NO. 147 of 2006

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ORDER:

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Petitioner filed this writ petition seeking to declare the Cr.No.E2/972/2005, dt. 30-12-2005 registered by the 2nd respondent in not considering the independent analysis report dt.15-11-2005 and not revoking the suspension of licence in Rc.No.E2/972/2005, dt.30-06-2005 as illegal and arbitrary, and for a consequential direction to the respondents to permit the petitioner to carry on the business at Kotgally Toddy Shop.

The grievance of the petitioner is that the second respondent issued ICS Group licence in favour of the petitioner society with 11 constituent toddy shops and

it is conducting its business without violating any provisions of A.P. Excise Act and rules and the members of the society are tappers depending upon the occupation of the tapping profession and the petitioner society is selling pure toddy. While so, the first respondent inspected the petitioner's society licenced toddy shop No.2 and collected three toddy samples from one Yerra Gangadhar Goud and registered a case in accordance with rules in Cr.No.259/2005-06, dt.30-06-2005 under Section 37(a) of A.P. Excise Act alleging that the toddy was adulterated. It is stated that pursuant to the said spot inspection, the licence of the petitioner toddy shop No.2 was suspended by order dated 30-06-2005 in Rc.No.E2/972/2005 pending enquiry. As against the said suspension order, the petitioner filed an appeal before the Deputy Commissioner of Prohibition and Excise, Nizamabad Division and the Deputy Commissioner by his order dated 08-08-2005 dismissed the appeal. Thereafter, petitioner filed Writ Petition No.20571 of 2005 questioning the suspension order dated 30-06-2005 and this court while disposing the Writ Petition by order dated 26-09-2005 directed the respondents to take effective steps by sending one of the sample toddy in the said Cr.No.259/2005-06 dated 30-06-2005 to the independent laboratory for analysis. Thereafter, one of the samples was sent to the independent laboratory in Rc.No.2394/SFL/2005, dt.14-12-2005 and the laboratory opined that the sample does not conform to the standards of Alcohol contents, total acidity and volatile acidity it is therefore adulterated. As the allegation against the petitioner that the toddy was adulterated with chloral hydrate and the report of the laboratory discloses that chloral hydrate absent, petitioner made a representation before the 2nd respondent on 28-12-2005 to revoke the toddy shop licence, but the request of the petitioner has been rejected under the impugned proceedings dated 30-12-2005 by stating that in the light of the existing instructions, the result of the second sample cannot be considered to revoke the licence of the shop. Aggrieved thereby, petitioner filed the present writ petition.

On instructions, the learned Government Pleader appearing for the respondents submitted that in fact, previously one of the sample bottles was sent in Cr.No.259/2005-06 to the Government chemical examiner of the Prohibition and Excise, Regional Prohibition and Excise Laboratory, Nizamabad and the said chemical examiner has tested the prescribed toddy samples and found that the toddy was adulterated with total acidity and volatile acidity vide his report dated 15-11-2005. It is further stated that as per the Division Bench Judgment of this Court in

TODDY TAPPERS CO.OP. SOCIETY GROUP, KHAMMAM v. PROHIBITION AND EXCISE SUPERINTENDENT, KHAMMAM DISTRICT AND OTHERS wherein it is held that both the reports of the chemical examiners of the Excise Department as well as the State Food Laboratory are piece of evidence and both can be taken into consideration by the competent authority at the time of deciding about the cancellation, revocation or suspension of the licence keeping in view the general public health and the welfare of the consumers. In the instant case, Prohibition & Excise Department under the impugned order dated 30-12-2005 has not at all considered the reports of both the chemical examiners, by stating that as per the existing instructions, the result of the second sample cannot be considered to revoke the licence, but it does not give the existing rules. Hence the said order of the Prohibition and Excise is not in accordance with law. However, it is for the licencing authority to consider and dispose of the matter in accordance with the aforesaid judgment.

Having regard to the facts and circumstances of the case, I deem it appropriate to direct the second respondent to pass final orders by considering both the reports, which are the pieces of evidence and decide about the cancellation or revocation of the licence as indicated by the Division Bench of this court.

Writ Petition is accordingly disposed of. No order as to costs.

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V. ESWARAIAH, J.

Dated: 06-01-2006.

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